IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 9095 of 2007(G)

PETITIONER:

T.A. SURENDRAN,
THYPLAVILA VADAKETHIL, KUDAMUKKU, MAMMOODU P.O.,
NEYIYAPURAM, PATHANAMTHITTA, NOW WORKING AS
ASSISTANT ENGINEER, 110 KV SUB STATION,
ERINKATHU P.O., MEPPAYUR, KOZHIKODE.
K.S.E.B., ELECTRICAL SECTION SECTION, MELADY.

BY ADV. SRI.G.UNNIKRISHNON

RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

2. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, KERALA STATE ELECTRICITY BOARD,
VADAKARA.

BY SC SHRI. K.S. ANIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) No.9095 OF 2007 G
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Dated this the 20th March, 2007

J U D G M E N T

The petitioner is working as Asst. Engineer in the service of the 1st respondent-Board. Challenge is to Ext. P4 notice issued by the 2nd respondent directing the petitioner to show cause why the punishment referred to therein shall not be imposed on him.

2. Ordinarily this Court will be loathe to interfere with show cause notices issued by competent authorities directing the parties to submit explanation as to why the proposed action shall not be taken. In such cases this Court will direct the party concerned to respond to the show cause notice and to seek further remedies only when adverse orders are passed at the final stage. However, this is an extraordinary case where interference is necessary in the interest of justice and hence I permitted the counsel for the petitioner to argue the case of the petitioner on merits.

3. I have heard the Legal Liaison Officer for the respondents also.

4. It is agreed by counsel on either side that the contentions of the parties can be considered on merits at this stage itself and the writ petition can be disposed of.

5. Disciplinary proceedings were initiated against the petitioner based on Ext. P1 memo of charges served on him. He submitted his explanation as per Ext. P2. It appears that the disciplinary authority appointed an enquiry officer to go into the allegations and to take evidence. The enquiry officer has filed Ext. P3 report based on the evidence and materials on record which consist of the oral statement of P.Ws. 1 to 4. No witness was examined on the side of the petitioner. No documents were produced in support of the charges. The petitioner produced Exts. A1 to A5 in support of his defence. The enquiry officer after going through the evidence on record found that the accusation made against the petitioner has not been proved and that he shall be exonerated from the charges. Thereafter the disciplinary authority has issued the impugned show cause notice. Though it is open to the disciplinary authority (respondent No. 2) to disagree with Ext. P3

enquiry report, if he feels so necessary based on the evidence on record, what is seen from Ext. P4 is that he accepted Ext. P3 in toto, and accordingly recorded in Ext. P4 as follows:

> "The Enquiry officer submitted the enquiry report vide paper read as 5th above accepted in toto. On examining and considering the enquiry report, the undersigned proposed to award a minor punishment of "WARNING" to Sri. T.A. Surendran, Assistant Engineer, 110 KV Sub Station, Meppayyur."

6. Learned counsel for the petitioner is perfectly right in contending that having accepted the enquiry report which finds the petitioner not guilty, the disciplinary authority has committed a serious illegality in imposing or proposing to impose punishment on the petitioner. The question of imposing penalty arises only when the employee is found guilty of the charges. Imposing penalty on a person who is found not guilty is unheard of. Hence, that part of Ext. P4 order which proposes to impose penalty on the petitioner is liable to be set aside as arbitrary and illegal.

7. The punishment sought to be imposed is

'warning'. Statutory provisions for initiating disciplinary action and finalising such disciplinary action have been framed and published in the form of a regulation called "Kerala State Electricity Board Employees' (Classification, Control and Appeal) Regulations. Regulation 11 of the aforesaid Regulations enumerates the nature of penalties which can be imposed on a Board employee. There are 11 kinds of penalties enumerated in Regulation No. 11. It starts from 'censure' and ends with 'Reduction of Pension.' Warning is not a penalty prescribed by the above Regulations. Hence, the 2nd respondent has violated the Regulations in proposing to impose a penalty which is not prescribed by the said Regulations. In that respect also Ext. P4 is unsustainable and per se illegal. I, therefore, set aside Ext. P4.

The writ petition is allowed as above.

K.K. DENESAN
JUDGE

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